

Town of Hamburg
Planning Board Meeting
September 5, 2012
Minutes

The Town of Hamburg Planning Board met for a Regular Meeting on Wednesday, September 5, 2012 at 7:00 p.m. in Room 7B of Hamburg Town Hall, 6100 South Park Avenue. Those attending included Chairman Peter Reszka, Stephen McCabe, Gerard Koenig, Sasha Yerkovich, Daniel O'Connell, David Bellissimo and Doug Schawel.

Others in attendance included Andrew Reilly, Sarah desJardins, Richard Lardo and Councilman Joseph Collins.

Public Hearing – Willow Woods Subdivision

Mr. McCabe read the following public hearing notice:

“Notice is hereby given that the Town of Hamburg Planning Board will hold a second Public Hearing on a 49-lot subdivision known as the Willow Woods Subdivision to be located on the south side of Taylor Road on September 5, 2012 in Room 7 B of Hamburg Town Hall at 7:00 P.M. The public hearing is being re-held to advise the public of updated information about the project.”

Andrew Gow from Nussbaumer & Clarke, representing the applicant, stated that a 49-lot subdivision is proposed off of Taylor Road. He further stated that one of the main issues the applicant has been dealing with since the beginning of the approval process is the “dump area” in the back of the property, noting that residents in the area recollected that dumping had occurred in this area in the 1950s and early 1960s.

Mr. Gow stated that an environmental report was prepared in 1994 that studied the area of the dump and adjacent wetlands. He noted that soil samples were taken and tested at that time and the results were negative for contaminants. He further stated that when this current project was proposed, the applicant had the 1994 report updated, which included sampling test locations between the subdivision and the dump site to check for contaminants through ground water that would be leaching towards the subdivision. He noted that every one of the ground tests revealed that there was no leaching of any sort of contaminated material towards the subdivision.

Mr. Gow stated that subsequent to the above testing, Mr. McCabe visited the site and had some areas of concern about areas where tanks, crushed drums, tires, etc. were found. He stated that the applicant's environmental consultant did test pits in the locations where the debris was found. He noted that the area that the consultant looked at was the area that was indicated on the 1994 report as being the center of the dump site.

Mr. Gow stated that, in reviewing the 1958 aerial photographs, it was found that the dump site had shifted somewhat to the west. As a result, and since the Board's August 15, 2012 meeting, the consultant did ten (10) additional test holes that are centrally located in the area of the dump site depicted on the 1958 aerial photographs. He noted that every test hole came back negative.

Dave Steiner from Empire Geo Services stated that a stake was surveyed in the center of the dump site from the 1958 photographs, and then test pits were measured out one hundred feet in all compass directions from the stake. He noted that a dump site was found.

Mr. Steiner stated that he found shallow trenches and still hit rock at six (6) or seven (7) feet below the surface with two (2) to 2.9 feet of garbage (bottles, tin cans, newspapers, etc.) found. He further stated that in the five (5) test pits in the dump area there was 3.3 to five (5) feet of soil fill (clean soil that had been excavated out and set off to the side) that was covering the garbage.

Mr. Steiner stated that the trenches seemed to be oriented north – south and some settlement of the garbage can be observed. He further stated that the conditions found in these five (5) test pits are very similar in terms of the type of garbage, the setting and the surrounding geology.

Mr. Steiner stated that he took a soil sample from the west test pit and the east test pit (the soil that was mixed with the garbage) and analyzed them for a full suite of analytical parameters. He noted that he got some detection of some metals and volatiles, but all of the concentrations that were detected are below the 6 NYCRR Part 375 limits for residential land use.

Mr. Gow stated that the area of this dump site is not where the subdivision is proposed on this property. He noted that the nearest property line to this dump site is 825 feet away.

Mr. Reilly asked the consultants if the surface debris pile that was found near the areas of the original test pits is newer material or materials from the landfill from the 1950s. Mr. Steiner responded that the vehicles noted in the area seem to be 1950s vintage.

Mr. Reilly stated that perhaps the area was used as a landfill in the 1950s and 1960s, and then subsequent to that period of time people dumped surface materials there, whether legally or illegally. He also stated that it appears from the work the consultants have done at the site that the rock is approximately six (6) to seven (7) feet below the surface.

In response to a question from Mr. Reilly, Mr. Steiner stated that while investigating this area, he was not able to decipher where ground water would be because it was so dry and also because the water table is probably below the level of the rock.

Mr. Koenig stated that it has been suggested that some of the dumping that was done on this site was done by the Village of Hamburg. He asked if the Village had been approached and Mrs. desJardins stated that she did ask the Village. She further stated that she is still waiting to hear back from the Mayor.

Mr. Bellissimo asked what the difference in elevation is between the area where the subdivision is proposed and the dump site. Mr. Gow responded that the western portion of the property is generally the highest area of the property.

In response to a question from Mr. Bellissimo, Mr. Gow stated that five (5) monitoring wells were placed just outside the area of the proposed subdivision and all five (5) came back negative. He further noted that only one (1) well actually had ground water in it.

Mr. Schawel asked if the Board can assume that nothing will get worse over time. Mr. Gow responded that this area has been monitored through the reports done since 1994 and every one has come back negative, so it can be assumed that conditions will not get worse.

Mr. Koenig asked whether, if it is determined that the site is clean and the Planning Board approves this project but years from now it is determined that the area is contaminated, the Planning Board would be liable.

Mr. James Yoviene, applicant, stated that the property has been clean for the last sixty years and he sees no reason to think that anything will change. He further stated that all of the debris found above ground at the site has been removed.

Mr. McCabe stated that he walked the site in February 2012 and found material on lots 47, 48 and 49, as well as material scattered all over the site, such as empty gas tanks. Mr. Yoviene responded that that material has been removed.

Mr. McCabe stated that what has bothered him from the start of this process is that he does not believe the Planning Board is in a position to make a judgment as to whether or not it is clean or adequately safe. He stated that a professional, unbiased oversight, such as the New York State Department of Environmental Conservation (NYSDEC) or the Department of Health, should be consulted.

Mr. Yoviene stated that the 52-page report prepared by his consultants was reviewed by Kevin Hines from the NYSDEC and he said Mr. Yoviene could go ahead with the project. Mr. McCabe responded that the Planning Board has not received any correspondence to that effect from Mr. Hines. Mr. Gow stated that the NYSDEC will not officially weigh in on this issue.

Mr. Gow stated that the Planning Board has asked the applicant to hire professionals to do the investigations, which was done.

Mr. McCabe stated that the Planning Board was assured at its last meeting by Mr. Steiner that there was no dump at the site. Mr. Steiner responded that what he said at the Board's last meeting was that based on the test pits, there was no evidence of burial in the area of the cars where the test pits were done. He stated that he said at the Board's last meeting that he did not see obvious bowl-type excavation of the landfill on the aerial photograph from 1958 that shows the disturbed area. He stated that he also said at that time that the shallow trenching was not apparent in the 1958 photograph.

Mr. Bellissimo stated that, if the dump site is 825 feet away from the proposed subdivision, he cannot envision how anything can leach that great of a distance, when it has not done so up to this time.

Mr. McCabe stated that the Planning Board is not even sure exactly how far the dump site extends. He further stated that there are five (5) test pits in the center of what is thought to be the dump site, but who is to say that if the consultant goes out another 100 feet on each of those transects he would not continue to hit garbage?

Mr. McCabe stated that when he looked at the Google Earth historic satellite photos, the dump site appears far more extensive than what is indicated on the map provided by the consultant in terms of the length of the trenches.

Chairman Reszka declared the public hearing open. He read the following email received by the Planning Department regarding the proposed subdivision:

"The Sun article "Decision on Willow Woods still up in the air" of 9/30/12, indicated that " a professional hired by the property owner, James Yovienne" found no traces of a dump. No surprises here, but I beg to differ. As a child in the 50's and 60's I lived in the area and visited the dump many times. Furthermore I asked my brothers and others, including my father-in-law all of whom lived in the area. They verified the existence of the dump. My discussion with my brothers included asking them to draw a map locating the dump site. My father-in-law also verified that the dump existed while he was young. I suggest that probes be taken at:
42°42'06.31" N 78°49'10.63" W

Looking at Google Maps and looking back in time to the earliest view on 3/27/95, you will see an un-wooded slash. This is where the last dump site is located. The older sections of the dump are just east of this clearing. I suggest probing in these areas.

My only concern is that this looks as if this was the section of the development that was allocated for park land to be given to the town. As a taxpayer I would not want to get this "gift" and then become responsible for the clean-up. I am a bit suspicious that this site was picked to be green space, not for home sites. Makes one think doesn't it.

Alfred Soboleski
6490-25 Taylor Rd.
Hamburg NY"

The following people spoke:

- Bob Mahoney, Taylor Road, stated that he has observed that the applicant has been trying to clean the property up. He stated that his concern has to do with the traffic on Taylor Road and asked if traffic studies have been done. He stated that the road is busy and there is a lot of pedestrian traffic on it. He stated that he wants to ensure that something is submitted in writing from a professional entity indicating that the environmental issues have been addressed.
- A member of the public asked if people will be made aware of the existence of this dump site before they purchase homes in this subdivision.

Chairman Reszka declared the public hearing closed.

Chairman Reszka stated that the Planning Board has two (2) previous reports from reputable firms indicating that there is a dump site but that no contaminants were found there. He noted that the Board also has a recent study from a reputable firm indicating that in the area they surveyed there was no problem. However, after some pressure from the Board, this firm investigated further and found that there was, indeed, a dump site.

Chairman Reszka stated that the Board is fairly certain that the dump site exists in an area larger than what was tested. He further stated that the Board's main focus is to ensure that if this subdivision is built, it is as safe as possible. He noted that he agrees with Mr. McCabe that the Board does not have the capability, knowledge and experience to interpret the data presented.

Chairman Reszka made a motion, seconded by Mr. McCabe, to issue a Positive Declaration for this project. Carried.

Mr. Reilly stated that the Planning Department will perform the required mailings relative to the Positive Declaration.

Chairman Reszka stated that the fact that the Board issued a Positive Declaration is not a reflection on the applicant in any way, shape or form, nor does it mean that the project will not be approved. The Board is simply indicating that it needs more information than it has been given in.

Mr. Bellissimo made a motion, seconded by Mr. O'Connell, to table this project. Carried.

Engineering Department comments have been filed with the Planning Department.

Public Hearing - Russo Development (Old Milestrip Road)

Chairman Reszka stated that the applicant asked that the project be tabled until the Board's next meeting.

Engineering Department comments have been filed with the Planning Department.

Boston State Holding Co., LLC – Rezoning from R-2 to R-3

Mr. Bellissimo made a motion, seconded by Mr. O'Connell, to remove this project from the table. Carried.

Mr. Reilly stated that traffic information regarding Howard Road was received by the Planning Department and Board members were given a copy.

Chairman Reszka stated that Captain Wickett from the Hamburg Police Department did an excellent job of compiling the traffic information for the Board.

Attorney Sean Hopkins, representing the applicant, stated that the applicant is requesting the rezoning of this parcel from R-2 to R-3 to allow the construction of 11 two-story buildings consisting of 66 upscale, luxury rental units. He noted that a large subdivision exists on one side of this property (zoned R-2) and more intensive commercial uses exist on the other side. He stated that the applicant believes that this proposal is a suitable transition between the commercial and residential uses on either side of the property.

Attorney Hopkins stated that the applicant proposes a 50-foot wide conservation easement that would be the subject of a deed restriction that would be reviewed by the Town Attorney's office and filed with the Erie County Clerk's office. He noted that any vegetation in the conservation easement would be permanently preserved.

Attorney Hopkins stated that the applicant deserves some credit for taking the analysis of this project further than most applicants would at the rezoning stage. He noted that the applicant has retained the services of a well-known architect and is working closely with his engineering consultant to design a project that makes sense, given the configuration of the parcel, as well as the existing uses and zoning classifications of parcels in the immediate vicinity.

Attorney Hopkins stated that the target market for these rental units would be empty-nesters, affluent seniors and young professionals.

Attorney Hopkins stated that the Town of Hamburg has spent a great deal of time updating its Comprehensive Plan and it is clear that this property is located in the "high density mixed" area of the Generalized Land Use Map associated with the Comprehensive Plan. He stated that the requested zoning classification being sought is clearly consistent with what the Town envisions the future use of this property should be. He further stated that New York State Town Law, Section 272 A (11) expressly states that all land use decisions should be in accordance with an adopted Comprehensive Plan.

In response to a question from Mr. McCabe, Attorney Hopkins stated that the north boundary line of the property is the center line of the creek.

Attorney Hopkins stated that, based on the traffic information and accident analysis on Howard Road received by the Planning Department from the Police Department, it appears that there are not a high number of accidents at the corner of Camp Road and Howard Road.

Chairman Reszka stated that the Board had just that evening received copies of the traffic study of Howard Road, as well as the accident history of the Camp Road/Howard Road intersection.

Chairman Reszka stated that Board members received quite a bit of correspondence regarding this proposal, including an email from Catherine Sullivan and letters from Allen McIntyre, Spencer and Janet Plarr, Douglas and Kimberly Cline, Russell and Jennifer Sparcino, Cheryl McBride, JoAnn Greiner, Kurt Greiner, Jason Galuszka, Colleen Eagen, Deanne Mills, William and Margaret Carey, Mike Ginter and James Jancewicz.

Additional letters were submitted to the Board from Thomas and Kathy Fossett, Kris and James Gorman, William and Amy Brodie and Stan and Jennifer Kozub.

Mrs. Yerkovich asked Mr. Reilly if it is true that a proposed rezoning of the property ten (10) years ago was denied. Mr. Reilly responded that he will research that, noting that there was a subdivision previously proposed on this property and he does remember some discussion of increasing the density.

Mrs. Yerkovich stated that several of the letters received reference a rezoning request that was denied ten (10) years ago and she does not think this was the case. She stated that she would like clarification of this for the record.

Chairman Reszka stated that an email was received from Jim Jancewicz that references the denied rezoning ten (10) years ago.

Cheryl McBride, 3479 Heatherwood, stated that the traffic study that was done on August 29, 2012 and August 30, 2012 was before the start of the school year and she feels the school bus traffic should also be considered. She stated that there is a lack of speed control on Howard Road and there are many school-age children who ride on school buses. She further stated that Howard Road is used as a cut-through between Camp Road and Southwestern Boulevard.

Chairman Reszka stated that, based on the traffic information submitted by the Police Department, the speed limit on Howard Road is 30 mph and the average speed recorded was 34 mph.

Mr. Reilly stated that this was not a traffic study, but rather a traffic report and accident history submitted by the Police Department at the Planning Board's request.

John Percy, 3484 Heatherwood Drive, asked if the recreational component of this project had been submitted to the Planning Board. He asked where the fifty feet would be for the conservation area. He stated that he is concerned about the lack of greenspace in the area, the animal habitat and traffic. He stated that he feels that the applicant is asking for approval to squeeze this development into an area where greenspace should be, or at least where an R-2 project should go.

Andrew Gow from Nussbaumer & Clarke, representing the applicant, stated that the recreational component of the project would be added at the Site Plan Approval stage of the review process.

Attorney Hopkins stated that the fifty-foot conservation area would be measured from the center of the creek to the edge of the buffer.

A member of the audience stated that he has lived on Howard Road since 1949. He asked if the survey of this property is correct.

Attorney Hopkins stated that the property was surveyed by Nussbaumer & Clarke and it is correct.

Mr. Bellissimo made a motion, seconded by Mr. McCabe, to table this proposal. Carried.

Engineering Department comments have been filed with the Planning Department.

Camp Road Medical Park

Chairman Reszka stated that the applicant asked that the project be tabled.

Engineering Department comments have been filed with the Planning Department.

Suburban Adult Services, Inc.

Chairman Reszka stated that this property was recently rezoned by the Town Board. He further stated that the applicant is now requesting Site Plan Approval of the project.

Robin Cierniak from William Schutt & Associates, representing the applicant, stated that the applicant proposes to construct a twelve-unit apartment building. She noted that the applicant has been working with the Engineering Department, Erie County Department of Environment & Planning, Erie County Highway Department and the Water Authority regarding the project.

Ms. Cierniak stated that a proposed two-acre conservation easement area is shown on the Site Plan and would remain in its natural state.

Mr. Reilly clarified that the conservation easement area would be owned by the applicant but the Town of Hamburg would have an easement over the property protecting it from being cleared or disturbed.

Mr. Bellissimo made a motion, seconded by Mr. Schawel, to schedule a public hearing for this project to be held on September 19, 2012. Carried.

Engineering Department comments have been filed with the Planning Department.

OTHER BUSINESS

Mr. Schawel made a motion, seconded by Mr. Bellissimo, to adjourn the meeting. The meeting was adjourned at 8:15 P.M.

Respectfully submitted,

Stephen J. McCabe, Secretary

Planning Board

Date: September 13, 2012